tablished the fact of such further advances and it is not possible for the court to presume their existence so as to confer a right upon the first respondent to further proceeds of the sale.

Accordingly, if the order for the balance of the purchase moneys to be paid direct to the first respondent were allowed to stand, the judgment creditors would suffer severe prejudice. I therefore order that the balance of the purchase price be paid into court within 30 days to be distributed rateably between the creditors, the first respondent to take priority in the distribution in the sum of $33,000 plus the amount of any further advances made subsequent to the execution of the Plentong charge, whether by way of fixed loan or cheques met on overdraft, plus interest at 11% per annum up to the date when the first prohibitory order was made against the said property at the instance of HHBB.

As the appeal is allowed and as the first respondent has, as against the second respondent, been the effective beneficiary of the purchase moneys, the first respondent is ordered to pay the costs here and below.

I have one final observation to make. This appeal has demonstrated the desirability of having the same magistrate deal with any subsequent application relating to the variation of an order he has made, particularly when the application relates to the setting aside of that order. This, I think, will to a great extent avoid the situation that gave rise to this appeal.

Appeal allowed.

Solicitors: *Lim & Teng; Gan & Lim.*

RE TANJONG PUTERI JOHORE STATE ELECTION PETITION

ABDUL RAZAK BIN AHMAD v. DATUK MD. YUNOS BIN SULAIMAN & ANOR.

[O.C.J. (Wan Yahya J.) 24 January 1988]

[Johore Bahru – Election Petition No. 1 of 1986]

Elections – Whether election properly conducted – Discrepancy in votes – Violation of secrecy principle – Grave impropriety in despatch of ballot boxes – Relevance of United Kingdom election laws in our local context – Election Offences Act 1954, s. 32(b) – Elections (Conduct of Elections) Regulations 1981.

At an election held in a certain constituency, the first respondent emerged as the winning candidate. The petitioner who stood as a candidate in that constituency polled less votes. He took out the present petition claiming that the election was not properly conducted and that the election should be declared void.

Held: (1) the numerous errors, mistakes or irregularities and the unforseen and improper movement of the ballot boxes, when considered collectively, constitute sufficient proof to the satisfaction of this court that the election had not been conducted substantially in accordance with the election laws;

(2) the election was void and the first respondent ought not to have been elected;

(3) a certificate under section 36 of the Election Offences Act 1954 would be issued.

Cases referred to:

(1) *Yong Kuan Teik* v. *Devan Nair* [1965] 2 M.L.J. 162 (apprvd).
(2) *Norbert Choong Kai Chong* v. *Mohamed Idris Bin Haji Ibrahim & Anor.* [1980] 1 M.L.J. 316 (apprvd).
(3) *Ali Amberan* v. *Tunku Abdullah* [1970] 2 M.L.J. 15 (apprvd).
(4) *Mohamed Jaafar* v. *Sulaiman & Anor.* [1970] 1 M.L.J. 18 (not folld).
(5) *Woodward* v. *Sarsons* (1875) 32 L.T. 867 (not folld).
(6) *Morgan and Others* v. *Simpson & Anor.* [1974] 1 All E.R. 241 (apprvd).
(7) *Islington, West Division* case [1901] 5 O.M. & H. 120 (refd).
(8) *Re Kensington North Parliamentary Election* [1960] 2 All E.R. 150 (refd).

HIGH COURT.

G.S. Nijar (*Mohideen Abd. Kadir* and *Anantha Kumar* with him) for the petitioner.

Yacob bin Hj. Atan for the first respondent.

P.M. Mahalingam (*Mohamad Rauff bin Nabi Box* with him) for the second respondent.

Cur. Adv. Vult.

Wan Yahya J.: At the last general election held in the state constituency of Tanjong Puteri on August 4, 1986, the petitioner, Encik Abdul Razak bin Ahmad, a candidate of the PSRM, polled 11,003 votes as against 11,509 of his rival candiate from the Barisan Nasional Party (first respondent). Although the first respondent emerged as the winning candidate with the majority of 506 votes, the petitioner feels that the result was deficient, improper and unfair as the election was not conducted substantially in accordance with the principle of our election laws. He is therefore invoking section 32(b) for a declaration that the election is void and that the first respondent ought not to have been returned as the elected candidate.

The grounds on which the petitioner rests his case are:

(1) That there is a significant and inexplicable discrepancy of votes between those cast for the two state seats and those cast for the Johor Bahru parliamentary constituency. This suggests that the election could not have been conducted in substantial compliance with the Elections (Conduct of Elections) Regulations 1981 and ought to be declared void under section 32(b) of the Election Offences Act 1954 (Act 5). Further the excess votes would affect the result of the election.

(2) That there was a violation of the secrecy principle in the counting of the postal ballots.

(3) That there was grave impropriety in the despatch of ballot boxes from a particular polling station to the returning officer at the counting centre.

Now section 32(b) of the Election Offences Act 1954, under which the petition is moved, reads as follows:

"32. The election of a candidate at any election shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the election judge:

(b) non-compliance with the provisions of any written law relating to any election if it appears that the election was not conducted in accordance with the principles laid down in such written law and that such non-compliance affected the result of the election;"

The written law mentioned in the above section no doubt refers to the Elections (Conduct of Elections) Regulations 1981 in regulation 30(1), of which the consequence of non-compliance with the Regulations is again expressed, but in a negative form, in the following terms:

"No election shall be invalid by reason of any failure to comply with any provision of these Regulations relating to elections if it appears that the election was conducted in accordance with the principles laid down in such provisions, and that such failure did not affect the result of the election."

The English Court of Appeal has come out with a most interesting judgment on the term "substantially in accordance with the laws as to the election". However, before proceeding to consider this judgment, we have first to satisfy ourselves on the similiarity between the election laws as found in the United Kingdom and in Malaysia. In this respect, my attention has been drawn to the judgment of Thomson L.P. in *Yong Kuan Teik* v. *Devan Nair*[1]; Harun J. in *Norbert Choong Kai Chong* v. *Mohamed Idris bin Haji Ibrahim & Anor.*[2] and Raja Azlan Shah J. (as he then was) in the case of *Ali Amberan* v. *Tunku Abdullah*[3] to the effect that our laws and regulations are modelled on the laws of the United Kingdom and that the decrees of the English courts would have a salutary effect in our courts. On my part, I would have no hestitation in adopting the rationale enunciated in the English cases should these provisions be identical in substance to our laws on election.

The similiar provision to our regulation 30(1) is to be found first in section 13 of the Ballot Act 1872 (UK) which was later substantially re-enacted in the Representation of the People Act 1949 which are both reproduced hereunder for comparative convenience.

Section 13 of the 1872 Act said:

"No election shall be declared invalid by reason of a non-compliance with the rules contained in the First Schedule in the Act, or any mistake in the use of the forms in the Second Schedule of this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election."

Section 37(1) of the Representation of the People Act 1949 says:

"No local government election shall be declared invalid by reason of any act or omission of the returning officer or any other person in breach of his official duty in connection with the election or otherwise of the local elections rules if it appears to the tribunal having cognizance of the question that the election was so conducted as to be substantially in accordance with the law as to elections and that the act or omission did not affect its result."

In the case of *Mohamed Jaafar* v. *Sulaiman & Anor.*,[4] Chang Min Tat J. (as he then was) held that the provisions of section 13 of the Ballot Act 1872 were identical to our section 32(b) of the Election Offences Act 1954. However, the judgment went on to conclude on the authority of *Woodward* v. *Sarsons*:[5]

"Before an election court can declare any election void for reasons of non-compliance with the provisions either of any written law or of any regulations relating to elections, it must be satisfied, among other things, that the failure of compliance affects the results of the election."

The latter conclusion in this case may have to be re-considered in the light of the Court of Appeal's decision in *Morgan* v. *Simpson*[6] in which Lord Denning strongly criticized and reviewed the earlier decisions including *Woodward's* case which postulates that an election could only be declared invalid if the errors or non-compliance of the election laws had affected the result of the election.

Morgan's case set out the following propositions on the application of section 37 of the Representation of the People Act 1949 which is almost identical with section 13 of the Ballot Act and our present section 32(b) of the Election Act as well as regulation 30(1) of our Regulations, *i.e.* the court would declare an election invalid if:

(i) the irregularities arising from the management of the election are of such a nature as to convince the court that it was not conducted substantially in accordance with the election laws, irrespective of whether the irregularities complained of have affected the result of the election or not; or

(ii) the irregularities, however trivial, have affected the result – even though the election had been conducted substantially in accordance with the election laws.

It was argued by the petitioner that on the basis of the *Islington, West Division* case[7] the burden of proof under section 13 of the Ballot Act lies on the respondent and that since that section had been held to be identical with our section 32(b) of our election laws in *Jaafar's* case, counsel suggests that the burden of proving this case lies on the respondent. However, counsel did not detract from his duty to cite the authority in *Re Kensington North Parliamentary Election*[8] in which it was held that the burden of proving whether a parliamentary election was conducted substantially in accordance with the election laws or whether the irregularity had affected the result does not lie on the respondent but it is a matter which the election court would, after hearing the entire case, decide.

In this respect, it is interesting to note, in section 32(b) of the Election Offences Act, that the standard of proof is mentioned as "proof to the satisfaction of the election judge" whereas in regulation 30(1) of the Regulations, the operative phrase reads "if it appears to the tribunal having cognizance *etc.*..."

In my view, regulation 30(1) is merely a saving provision in the Regulations and not the authoritative provision for avoiding an election. The real authority enabling the election judge to declare the election of a candidate void is contained in section 32(b) and the standard weight of evidence required to move the court into making such an order is "proof" to the satisfaction of the election judge. It is neither wise nor practical to lay down an inflexible standard of proof to be followed in an election case when dealing with such application and for that reason the legislature has obviously left it for the election court to decide the quality of evidence required to prove a case according to the circumstances of each case.

The three grounds on which the petitioner relied are:

(1) the discrepancy between the votes cast for the parliamentary constituency and the two comprising state seats;

(2) failure to mix the postal votes with those from the other polling stations before counting;

(3) divertive route and unauthorized stopover taken by the presiding officer when conveying the votes from the polling station to the counting centre.

The facts relating to the first ground are not disputed by the respondent. The parliamentary seat for P.130 Johor Bharu comprises two state seats of Tanjong Puteri and Gertak Merah. Polling for both parliamentary and state seats were carried out simultaneously. At the polling station, each elector was provided with two ballot papers differently coloured and marked for parliament and state. Once the elector had entered the booth, it is mandatory for him to place the ballot papers in the respective ballot boxes. Officers of the

Election Commission kept a discreet but watchful eyes on strict compliance with these procedures. The outcome of this procedure, if properly followed, would be such that the number of votes cast for the two seats must correspond to the ballot papers found in the parliamentary ballot boxes. In this particular election, the number of ballot papers issued at Tanjong Puteri polling station was 23,860 and those at Gertak Merah was 14,672. Logically, the number of ballot papers to be found in the parliamentary ballot boxes for the constituency of P.13, Johore Bharu should have been 38,532 but as it happened, only 37,368 ballot papers appears to have been cast by the voters for the parliamentary seats – thus indicating a discrepancy of 1,164. Counsel for the petitioner, referring to the single electoral roll and the strict procedures which demand each elector to cast both ballots into the respective boxes, submits that there was no deficiency in the parliamentary votes but that there was an excess in the state votes. Counsel was of course relying on the assumption that the ballot papers used in the parliamentary constituency represented the right figure. This is not necessarily so because errors in the form of non-replacement of spoilt votes, for instance, can lead to the reduction of the number of parliamentary votes. Then there is also a possibility of voters not placing the ballot papers into the parliamentary ballot boxes or placing both the state and parliamentary ballots in the state box. But above all, one has to consider that when such a massive number of ballots for three different constituencies were counted by three different teams consisting of many people, there was bound to be some human error in counting and thus resulting in the disparity between the figures arrived at by the two state teams on one hand and the parliamentary counting team on the other.

I am in full agreement with the suggestion that the disparity in the figures indicates errors or irregularities must have taken place in the conduct of this election but I am not prepared to speculate that such error or mistake had originated from the state and not the parliamentary election. As the mistake could have been in either place, it would be incorrect to state specifically that the mistake has affected the result of one of the two state seats, *i.e.* Tanjong Puteri, the constituency in which the petitioner had contested. Even if we were to assume that the 1,164 votes are the excess votes from Tanjong Puteri, this court is nevertheless unable to determine with sufficient clarity that the 1,164 votes were illegal votes meant for the petitioner nor are we in the position to say that the 1,164 votes are not intended for the first respondent.

Unlike the authorities cited by Mr. Nijar, the valid ballot papers evidencing the mistake which could have affected the results of the election are not available before this court. For these reasons, I must hold that the petitioner had not succeeded in proving the allegation that the disparity in the votes had affected the election at Tanjong Puteri. Be it so, the unaccountable disparity in votes points out to one inescapable conclusion, *i.e.* that there must have been substantial errors in the conduct of an election in the constituency concerned, or omission in exercising proper supervision over voters at the various polling stations or some departures from the strict adherence to the election laws during the election at these three constituencies. I would prefer to consider the implications on the gravity of such mistakes or irregularities together with the other allegations raised by the petitioner.

The second allegation raised by the petitioner is in respect of the omission to mix the postal ballots with those from the polling station before processing the counting. It is not disputed in this case that the counting of postal ballots were carried out separately after the counting of ballots from the polling station. Now, regulation 25(6) of the Election (Conduct of Elections) Regulations 1981 provides that after ascertaining that the number of ballot papers found in each box corresponds to the statement accompanying it, the returning officer should mix together all the ballot papers contained in all the ballot boxes. The expression "ballot papers" to my mind must include the postal ballots as well.

The narration of events pertaining to the opening and processing of the postal votes was quite confusing. It would appear that the envelopes containing the postal votes were verified, separated and placed in one box for parliament and one each for the two state seats whilst the unopened envelopes were placed in an unmarked spare ballot box. At 6.30p.m. the assistant returning officer in charge (R1W5) sealed all the boxes and an envelope in which he had placed all the rejected votes and moved them from the original counting place to the counting centre where he continued processing the postal ballots. On completion, the four ballot boxes were left on the stage and were completely overlooked until after all the polling station votes had been counted. On discovery of this mistake, three of the four boxes were taken

down from the stage and counted separately. Both Datuk Hj. Abd. Kadir bin Sam'on, the second respondent, and R2W5, Hj. Saadon bin Hj. Abdullah, are frank and upright witnesses but R2W5 appears to me to be indecisive. I am rather perplexed as to the manner in which he moved the ballots from one place to another in the midst of counting them, and I am equally puzzled as to what happened to the fourth box into which he had placed all the unverified and unopened envelopes. Obviously, there has been a departure from the directive provisions of the regulations and the consequence of such pretermission must be jointly considered with the other irregularities. The other issue raised by the petitioner is on the insufficient notice given to him to witness the opening of the postal votes. According to the petitioner, his agent (PW2) was only informed verbally through the phone to be at the district office at 5.00p.m. but when the latter arrived, he found that counting had in fact commenced at 3.00p.m. and by then 70% to 80% of the postal votes had been completed. The respondent denies this allegation and in rebuttal, called the chief clerk of the district office (R1W4) who said that he had taken the opportunity to inform the petitioner orally when the petitioner called at his office earlier that morning. However, the assistant returning officer who is also the district officer said in evidence he knew nothing about this and that the only notice given by him was conveyed through the phone. I do not propose to determine which of these three gentlemen is telling the truth because it is obvious from the evidence that no written notice at all was served to the petitioner as required under regulation 14(3) of the Elections (Postal Voting) Regulations 1959.

The circumstances leading to the third allegation are not denied. Polling for the state constituency of Tanjong Puteri and Parliament were carried out simultaneously at Sekolah Angkatan Tentera, Century Garden, Johore Bharu. Sometime before 7.00p.m. after polling had ended, the presiding officer at that polling station conveyed the ballot boxes from the polling station to the counting centre at Dewan Jubilee Intan. However, while doing so, he did not take the direct route to the centre but instead made a deviation to Taman Pelangi for the purpose of sending his sister-in-law, a polling agent at the same polling station, to her house. The route taken by the presiding officer was somewhat complex involving various turns into small roads in the housing settlement. As a result of which, the petitioner's agent who was following behind the presiding officer lost track of the car. There were only three persons in that car – the presiding officer who drove it, a policeman who sat by his side and the presiding officer's sister-in-law who sat on the rear seat. Both the presiding officer and the police constable gave evidence before this court. The presiding officer agreed that he had not taken the direct route to the counting centre because he wanted to send his sister-in-law home. He recounted that she had made a request in the presence of the police constable after the close of polling and that he had thereafter sought and obtained the permission of the constable. The policeman, according to him, laid down a condition that apart from his sister-in-law, nobody was to leave the car. He had driven the car towards her home and had stopped to let her out at the junction towards the end of the road along which she lives. He agreed that he was doing something "unauthorized" but contends that he had done nothing wrong, as he was merely doing so due to the absence of public transport for his sister-in-law to return home. He said that when polling ended at 6.00p.m. on that day, he had observed a large crowd outside and on enquiring, he had been told that they were waiting for public transport. During cross-examination, he agreed that this situation prevailed until 7.00p.m. He was thoroughly evasive on questions relating to the times of his departure and arrival. He would only say to repeated questions that he left the polling station before 7.00p.m. and he arrived at the counting centre after 7.00p.m. He denied tampering with the ballot boxes.

The constable's evidence supports the presiding officer's purpose of making the deviation but in other respects, their evidence differ. For instance, he said the girl's request to be sent home was not made in his presence and he was told about this only when they were already seated in the car. He denied there was any large crowd waiting for transport at 6.00p.m. He was certain that the car in which they travelled had left the polling station by 6.30p.m. as he had recorded so in his diary; but astonishingly, he could only recall that they arrived at the counting centre before 7.00p.m. which is contrary to what the presiding officer said. Probably, he did not write the time in his diary. He was somewhat paradoxical when questioned about the propriety of the alleged permission which he gave to the presiding officer to send his sister-in-law home.

Apart from these conflicting evidence, there are two questions or matters at issue which I considered have not been satisfactorily explained. The first one was the presiding officer's actual

cause or motive for making this detour to send his sister-in-law home despite his knowledge that such action was unauthorized. When questioned by the petitioner's counsel, he said that he thought public transport was not available to her at that time, as there was a large crowd waiting outside the polling station. This was of course different from what the police constable had said but even if we were to assume that he and not the policeman was truthful, I nevertheless cannot see the reason why she could not have gone home in the same manner as she had arrived earlier that morning, *i.e.* in her sister's (presiding officer's wife) car. There was a telephone available at the polling station and there was one in his house too. No reason was given as to why the presiding officer's wife could not have been summoned to fetch her sister, if the situation warranted it. The second equally important point at issue is the time period which the presiding officer had taken in his divertive journey. On this issue, the presiding officer was far from being helpful He would only say he left before 7.00p.m. and he arrived at the counting centre after 7.00p.m. The constable, on the other hand, was more precise on the time of departure which he had recorded as 6.30p.m. but strangely enough he could only guess that they arrived before 7.00p.m. If he had considered it important to record the actual time of departure in his diary, was the time of arrival at the counting centre so unimportant to him? Unfortunately, this is a matter of considerable significance to this court and the failure to account satisfactorily the time taken to reach the counting hall is indistinguishable from the failure to rebut the petitioner's evidence that the car with the ballot boxes only arrived an hour later at 7.30p.m.

To a great extent, the examinations of these two witnesses were devoted to the subtle suggestions as to what the presiding officer did or did not do with the ballot boxes and what he could have done to the contents while the boxes were out of public view. I think an equally, if not more important, issue to consider is what any reasonable member of the public would hypothize about ballot boxes being taken on a discursive or roundabout journey, out of the view of the public and polling agents' eyes by a presiding officer, who had the custody of both the ballot boxes and the sealing device, in the company of his own sister-in-law and an apathetic policeman and whether public confidence in the propriety of our election would be subject to suspicion by such grave indiscretion on the part of this officer.

On review of the entire case, I conclude that:

(i) there existed a large disparity in the number of ballot papers found in the parliament and state constituencies and that such disparity must give rise to the implication of serious error in the counting and/or irregularities in the conduct of the election;

(ii) the giving of verbal notice, if at all issued, was irregular, as it contravenes regulation 14(3) of the Election (Postal Voting) Regulations 1959;

(iii) the omission to mix the postal ballots with those from the polling station is not only contrary to the directive contained in regulation 25(6) of the Election (Conduct of Elections) Regulations 1981 but also offended the principle of strict secrecy of votes in the election as it tends to show that a particular class of the electorate, in this instance the police and army personnel, have voted for a particular candidate; and

(iv) the conduct of the presiding officer in taking the ballot boxes along an indirect route for the alleged purpose of sending his sister-in-law home is a highly improper act, which would create serious doubts in the minds of many reasonable members of the public as to the propriety, fairness and fair play of the election.

To my mind, an election does not merely symbolize the citizens' right to free franchize but entails public participation in selecting the government of their choice through a process which not only guarantees absolute fairness, secrecy, impartiality and regularity but which also encompasses public trust and confidence in the manner in which the process is carried out. For these reasons, various legal guidelines have been enacted to regulate the formalities of an impartial election. Any serious departures from these procedures will strike at the very foundation of our free and democratic system of political representation and affect public confidence in the impartiality of our election.

In my opinion, the numerous errors, mistakes or irregularities and the unforeseen and improper movement of the ballot boxes, when considered collectively, constitute sufficient proof to the satisfaction of this court that the election for the Johore state constituency of N.31, Tanjong Puteri, held on August 4, 1986 had not been conducted substantially in accordance with election laws.

Accordingly, I hereby declare that the said election is void and in consequence thereof, and not for reason of any impropriety on his part, the first respondent herein ought not to have been elected.

A certificate under section 36 of the Election Offences Act 1954 to this effect will be issued forthwith.

The second respondent shall bear the costs of this petition.

Order accordingly.

Solicitors: *Nijar & Nijar; Yacob Atan & Associates.*

CHIN NAM BEE DEVELOPMENT SDN. BHD. v. TAI KIM CHOO & 4 ORS.

[A.C.J. (Eusoff Chin J.) 21 January 1988]

[Muar – Civil Appeal No. 11-5 of 1986]

Contract – Sale and purchase of house – Payment of an additional sum – Whether payment voluntarily made – Whether can be refunded – Whether term "coercion" in section 15 of Contracts Act 1950 (Act 136) applicable to section 73 of the Act – "Coercion" – Meaning of – Contracts Act 1950, ss. 2, 14, 15 & 73.

The respondents were purchasers of certain houses to be constructed by the appellants. Each of the respondents had signed a sale and purchase agreement to purchase a house at $29,500.

The present dispute related to the payment of an additional sum of $4,000 by each respondent to the appellants. The magistrate had found that the payment of $4,000 was not voluntary but made under a threat by the appellants to cancel the respondents' bookings for their houses. The main ground of appeal by the appellants was that the $4,000 was paid voluntarily and not under any coercion. The respondents, however, claimed a refund of the additional sums paid.

Held, dismissing the appeal: (1) the definition of the word "coercion" in section 15 of the Contracts Act 1950 does not apply to section 73. The word "coercion" in the context of section 73 of the Act should be given its ordinary and general meaning since there is nothing under section 15 which says that the word "coercion" should apply throughout the Act. The definition of "coercion" in section 15 should only apply for the purpose contained in section 14 as section 14 of the Act specifically says so;

(2) the amount paid by the respondents must be refunded to them under section 73 of the Contracts Act 1950.

Cases referred to:

(1) *C.M. Naested* v. *The State of Perak* [1925] 5 F.M.S.L.R. 185 (refd).

(2) *Kanhaya Lal* v. *National Bank of India Ltd.* 1913 I.L.R. Vol. XL (Calcutta series) 598 (refd).

CIVIL APPEAL.

K. Chandra for the appellants.

Tan Hock Kim for the respondents.

Cur. Adv. Vult.

Eusoff Chin J.: The plaintiffs (respondents) in the four consolidated civil suits, Batu Pahat Magistrate's Court Civil Action Nos. 234/80, 235/80, 289/80 and 292/80, were purchasers of houses to be constructed by the defendants (appellants). Each plaintiff had signed a sale and purchase agreement to purchase a house at $29,500. There was no dispute on this.

The dispute concerned the payment by each plaintiff of an additional sum of $4,000 to the defendants. The plaintiffs alleged that they were threatened and forced by Yap Soon Kean (D.W.2), a director of the defendant company, to pay the $4,000 each to the defendants as an increase in the purchase price, or else the defendant would cancel their bookings for the houses.

D.W.2 said that the $4,000 was for cost of additional works to be done to each house not on the request of the plaintiffs but agreed to by them at his oral suggestion. The magistrate having heard the witnesses formed the conclusion that the $4,000 was an increase of the cost of each house, paid by each plaintiff under threat that the defendant would cancel his booking for the house. The magistrate found that the plaintiffs had not agreed to the increase of $4,000 because under the sale and purchase agreement clause 13, a request for additional works must be made in writing.

The defendants had alleged that the plaintiffs had agreed to the additional work orally. The magistrate found that this was not so. He failed to understand how the defendant could have fixed $4,000 for the additional works in April 1979, when in fact the architect (D.W.1) employed by the defendant for the additional work gave his quotations for the additional work to the defendant only some six months later, on September 28, 1979, and the final instruction was given by the defendants to the contractor for the additional work on November 10, 1979. According to the